

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Larry Demetrius Pearson,

Civil No. 10-4622 (DWF/JSM)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Warden Jessica Symmes,

Respondent.

This matter is before the Court upon Petitioner Larry Demetrius Pearson's ("Petitioner") objections (Doc. No. 24) to Magistrate Judge Janie S. Mayeron's June 14, 2012 Report and Recommendation (Doc. No. 23) insofar as it recommends that:

(1) Petitioner's petition for a writ of habeas corpus be dismissed with prejudice; and

(2) he not be issued a Certificate of Appealability. Respondent filed a response to Petitioner's objections on July 3, 2012. (Doc. No. 25.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Having carefully reviewed the record, the Court concludes that Petitioner's objections offer no basis for departure from the Report and Recommendation. Petitioner contends that he was deprived of effective assistance of counsel at trial. (Doc. No. 24.)

Specifically, Petitioner claims that “the state court’s ruling that he was not denied effective assistance of counsel was contrary to and based on an unreasonable application of *Strickland v. Washington*.¹” (*Id.* at 1, citing *Strickland v. Washington*, 466 U.S. 668 (1984).) In particular, Petitioner challenges his attorneys’ withdrawal of a motion to suppress evidence and their failure to rebut testimony at trial. (Doc. No. 24 at 3-13.) Such allegations, however, do not establish that Petitioner is entitled to habeas relief. Petitioner has failed to demonstrate a substantial likelihood that, but for any errors by his counsel, he would have achieved a different outcome at trial. *See Strickland*, 466 U.S. at 694 (“The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”). Consequently, the Court concludes, as did Magistrate Judge Mayeron, that Petitioner has failed to establish that the state court ruling regarding the effectiveness of his trial counsel was either contrary to or involved an unreasonable application of clearly established federal law. *See, e.g., Harrington v. Richter*, 131 S. Ct. 770, 785-86 (2011). Nor has Petitioner demonstrated that the state court decision involved an unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d)(2). Petitioner’s petition for habeas relief is thus rightfully dismissed, and his request for a certificate of appealability is properly denied. *See* 28 U.S.C. § 2253(c)(2) (noting that a court cannot grant a certificate of appealability unless the applicant has made “a substantial showing of the denial of a constitutional right”).

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Larry Demetrius Pearson's objections (Doc. No. [24]) to Magistrate Judge Janie S. Mayeron's June 14, 2012 Report and Recommendation are

OVERRULED.

2. Magistrate Judge Janie S. Mayeron's June 14, 2012 Report and Recommendation (Doc. No. [23]) is **ADOPTED**.

3. Larry Demetrius Pearson's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. [1]) is **DENIED**.

4. This action is **DISMISSED WITH PREJUDICE**.

5. Petitioner will not be issued a Certificate of Appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 12, 2012

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge